

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,
Plaintiff,
v.
JOHN DOE #1, *et al.*,
Defendants.

Case No. 1:25-cv-00109-KES-EPG (PC)
FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF’S MOTION TO
PROCEED *IN FORMA PAUPERIS*
(ECF NO. 2)
OBJECTIONS, IF ANY,
DUE WITHIN 30 DAYS

Plaintiff Frederick Smith is a *pro se* inmate at Kern Valley State Prison, who filed this action pursuant to 42 U.S.C. § 1983 on January 27, 2025. (ECF No. 1). Along with his complaint, Plaintiff also filed an application to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C. § 1915. (ECF No. 2). In addition, the Court received a certified Trust Account Statement for Plaintiff’s account from California Department of Corrections. (ECF No. 6).

The Court normally requires a \$405 filing fee for a civil action. However, a federal statute, 28 U.S.C. § 1915, permits a plaintiff to commence a lawsuit without prepaying a filing fee. This statute requires “an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” § 1915(a)(1). In addition to filing an affidavit, a prisoner “shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately

preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.” § 1915(a)(2).

Both the IFP application and the Trust Account Statement indicate that Plaintiff has over \$3,000 in his account, with \$3,693.76 balance available the day Plaintiff filed his complaint. (ECF No. 2; ECF No. 6). These funds are sufficient to pay the filing fee in this action. Therefore, the Court will recommend that Plaintiff’s application to proceed *in forma pauperis* be denied and that Plaintiff be required to pay the filing fee of \$405.00 for this action in full.

Accordingly, **IT IS RECOMMENDED** that:

1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 2) be denied;
2. Plaintiff be ordered to pay the \$405 filing fee in full should he wish to proceed in this case; and
3. Plaintiff be advised that failure to pay the filing fee in full will result in the dismissal of this case.

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any objections shall be limited to no more than 15 pages including exhibits.

Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
IT IS SO ORDERED.

Dated: **January 29, 2025**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE